Filed 4/2/10 In re K.P. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.P., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. D.R., Defendant and Appellant.	E049040 (Super.Ct.No. RIJ115151) OPINION

APPEAL from the Superior Court of Riverside County. Martin H. Swanson, Judge, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

D.R. (mother) appeals from an order terminating her parental rights to K.P. under Welfare and Institutions Code,[1] section 366.26. Mother contends that no substantial evidence supports the juvenile court's finding that the parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i) was not established. We find no error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

K.P. was born in January 2009. A social worker, with a sign language interpreter, interviewed mother, who is deaf; mother admitted using methamphetamine four months earlier during her pregnancy. G.P., K.P.'s father,[2] also admitted to drug use. Mother and father had an open dependency case for their child, R.P., and mother had been denied reunification services in that case. Mother had had her parental rights terminated as to another child with a different father, and father had another open dependency case for another child with a different mother. Both of mother's older children had tested positive for methamphetamine at their births. The social worker detained K.P.

The Department of Public Social Services (Department) filed a petition alleging that K.P. came within section 300, subdivisions (b) and (j), because of mother's methamphetamine use, father's marijuana use, and the neglect of K.P.'s sibling. At the detention hearing, the juvenile court found a prima facie case had been made and ordered

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Father is not a party to this appeal.

K.P. detained. The juvenile court ordered visitation for mother at least two times per week.

The social worker filed a report and an addendum report before the jurisdiction/disposition hearing. Mother told the social worker she was enrolled in a parenting education program. Mother stated she had stopped using drugs before she got pregnant with K.P. and denied having used drugs during her pregnancy. Mother stated that when she was six years old, her mother had shoved a Q-Tip into her ear, causing her to become deaf. She had been raped by an uncle when she was 13, and her mother had hit her frequently and burned her with cigarettes and an iron. Mother had been in and out of foster care until she turned 18. Mother was not currently employed. She had started smoking marijuana in high school and had begun using methamphetamine when she was 24 years old. She believed she would benefit from a parenting education program, drug treatment program, random drug testing, 12-step meetings, and individual counseling. K.P. was placed in a foster home and was adjusting well. She had a bad hernia and was diagnosed with hip dysplasia, which required her to wear a body brace. Mother visited K.P. four times and the visits went well, although mother twice had arrived about 20 minutes late. Mother was on the waiting list for an inpatient drug treatment program as a precursor to her enrolling in Family Preservation Court.

At the jurisdiction/disposition hearing, the juvenile court found the allegations of the petition true and ordered under section 361.5, subdivision (b)(10) and (b)(11) that parents would not receive reunification services.

The Department filed a report before the selection and implementation hearing. The Department stated that it was likely K.P. would be adopted, and she was already placed in a potential adoptive home. Mother had enrolled in MFI Recovery Center but had been discharged from the program about three weeks later, when she tested positive for methamphetamine. She would be eligible to return to the program in 90 days. Mother had visited K.P. four times since K.P.'s removal from mother's care. Twice she had arrived about 20 minutes late. During the visits, mother acted appropriately and appeared to be concerned about K.P.'s well-being.

The Department also filed a positive preliminary assessment of K.P.'s potential adoptive family, who were "ready and willing" to give her "a lifetime of stability and care."

At the section 366.26 hearing in July 2009, mother's counsel requested long-term guardianship and asked the court to find an exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). The court found that no such exception applied, found that K.P. was adoptable, and terminated parents' rights to K.P.

III. DISCUSSION

As a general rule, if the juvenile court at a section 366.26 hearing finds the child is adoptable, the court must terminate parental rights unless a statutory exception applies. (§ 366.26, subd. (c)(1).) One such exception applies when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The parent has the burden of

showing that the beneficial parental relationship exception applies. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

Here, the juvenile court found that neither regular visitation and contact nor benefit to the child had been established. The court stated, "I don't believe that simply four visits over a period of months, some of which mother was late for, would necessarily even begin to establish a bond between the child and her mother for purposes of the exception . . . ." We agree. At the detention hearing on January 21, 2009, the court ordered visitation for mother at least twice per week. The jurisdiction report filed on February 6 stated mother had had weekly visits that had gone well. After that, however, the record indicates mother visited K.P. only on February 11, February 8, March 4, and May 20, 2009. The trial court could reasonably find that at her young age, K.P. had not developed any "significant, positive, emotional attachment" to mother. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Moreover, even if we were to accept mother's argument that she attended all the visits she was allowed and therefore established the first element of the exception, she has failed to establish the second element—that continuing the relationship would promote K.P.'s well-being "to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The record indicates that mother failed to show any willingness or ability to address the substance abuse issues that led to the dependency. She enrolled in a recovery program in May 2009 but was discharged approximately three weeks later when she tested positive for methamphetamine. She had similarly failed to

complete other substance abuse programs in the past. Those circumstances constitute substantial evidence to support the juvenile court's finding that K.P. would not benefit from continuing a relationship with mother more than she would benefit from the permanency of adoption with a loving family. (See *ibid.*) We find no error.

IV. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.